



**US Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to:

Issuance Date:

Public Notice No. 200100384-1

August 16, 2004

Stream: U/T Rush Creek

Expiration Date:

September 15, 2004

Address comments to:

US Army Corps of Engineers, Huntington District
602 Eighth Street
ATTN: CELBHE
Huntington, West Virginia 25701-2070

PUBLIC NOTICE

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Mr. Tom L. Scholl
1375 Jackson Street, Suite 401
Ft. Myers, Florida 33901

LOCATION: The proposed project is in an unnamed tributary of Rush Creek, near Marmet, in Kanawha County, West Virginia (latitude 38° 14' 41", longitude 81° 35' 57") as depicted in the attached Proposal Map (Drawing 1).

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to construct Valley Fill No. 3 and Pond No. 4 at the Rush Creek Surface Mine to facilitate the disposal of excess overburden material generated by the mining of the Stockton coal seam. The construction of Valley Fill No. 3 would result in the permanent impact of 1,500 linear feet (0.39 acre) intermittent stream and 900 linear feet (0.12 acre) ephemeral stream. Pond No. 4 would temporarily impact 1,075 linear feet (0.30 acre) intermittent stream. The watershed acreage above the toe of the proposed valley fill is 152.46 acres. These are revisions to a previous authorization by this office.

According to the applicant, the overall purpose of the proposal is to construct a valley fill and associated sediment pond to dispose of excess overburden spoil into waters of the United States in order to achieve optimal recovery of available coal reserves within the project area. This project is an amendment of a previously authorized project which provided for the construction of three valley fills for the storage of overburden. The applicant requests authorization for the downstream expansion of one valley fill and relocation of the associated sediment pond for the permanent storage of overburden associated with mining an additional portion of the Stockton seam. Plans of the proposed work are attached to this notice (Drawing 1). The applicant has incorporated Valley Fill No. 3 in the proposed post-mining land use. A copy of the post-mining land use plan is attached (Drawing 5).

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the applicant's goal. The applicant submitted an alternative analysis currently under review.

MITIGATION PLAN: To compensate for permanent impacts, the applicant proposes on-site and off-site mitigation through in-kind establishment of aquatic resources. The permanent loss of 1,500 linear feet of intermittent stream would be compensated downstream of the fill site by the off-site restoration of the same unnamed tributary. The restoration would be located at the confluence of the unnamed tributary with Rush Creek and continuing 1,500 linear feet upstream toward Valley Fill No. 3. To offset the permanent loss of 900 linear feet of ephemeral stream, the applicant proposes to establish approximately 2,000' linear feet of ephemeral stream segments within the Valley Fill No. 3 side conveyance channels. The conveyance channels will be enhanced as practicable with diversion structures to duplicate pre-existing channel. Temporary impacts of 1,075 linear feet of intermittent stream due to Pond No. 4 would be compensated by restoration of the stream as near as practical to pre-mining condition. Natural stream design techniques would be incorporated into the design of all established and restored channels with a minimum 50-foot vegetated buffer zone along the restored and established channels where practicable.

After stream restoration and enhancement is complete, a habitat assessment will be performed to determine if morphological characteristics have met or exceeded the original habitat scoring. If characteristics have not been met, the applicant will take corrective measures to meet or exceed original morphological characteristics. A stream delineation map (Drawing 2) and stream assessment location maps (Drawings 3 and 4) are attached.

The relocated and enhanced stream segments will be monitored for five years following completion of construction with annual monitoring reports submitted to the USACE, Huntington District. The reports will include performance parameters and photographs with locations or stations noted. Corrective measures will be taken in the event of any noted deficiencies.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. A copy of this public notice will be sent to the State Historic Preservation Office for their review. Comments concerning archeological sensitivity of a project area should be based upon collected data.

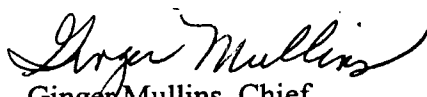
ENDANGERED/THREATENED SPECIES REVIEW: The Huntington District has consulted the most recently available information and has determined the project is not likely to affect the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species, which has been determined to be critical. This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

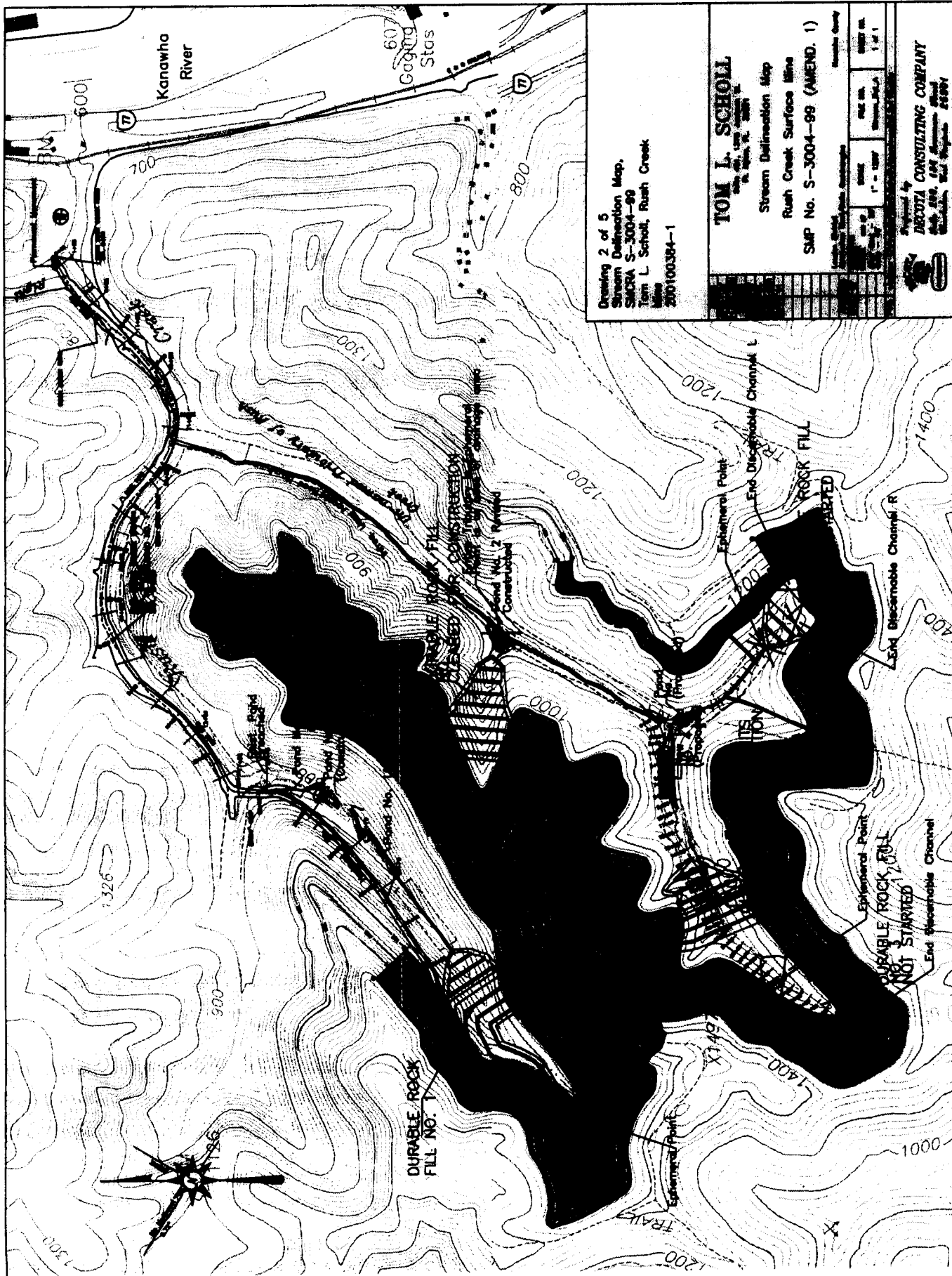
Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

If you have any questions concerning this public notice, please contact Mr. Richard Hemann of the South Regulatory Section at 304-399-5710.


Ginger Mullins, Chief
Regulatory Branch

(W)



Drawing 2 of 5
Stream Definition Map,
SACRA S-3004-99
Tom L. Scholl, Rush Creek
Mine
200100384-1

TOM L. SCHOLL
P.E., M.S., L.S., L.M.S.
Surveyor, Engineer, Geologist

Stream Definition Map
Rush Creek Surface Mine
SMP No. S-3004-99 (AMEND. 1)

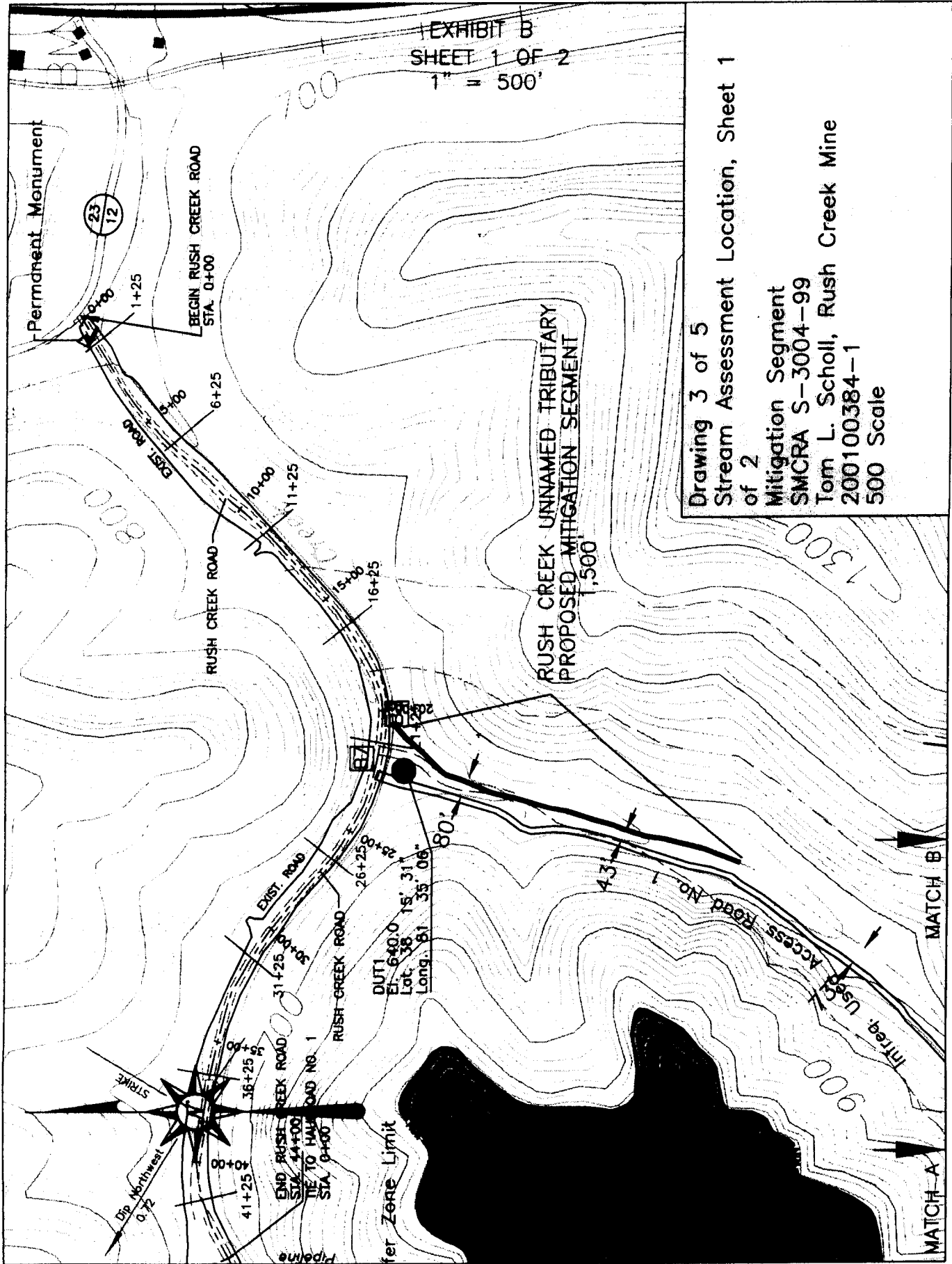
| Scale | | North Arrow | |
|-----------|-----------|-------------|-----------|
| 1" = 100' | 1" = 200' | 1" = 300' | 1" = 400' |

Prepared by
INCOPIA CONSULTING COMPANY
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EXHIBIT B
SHEET 1 OF 2
1" = 500'

Drawing 3 of 5
Stream Assessment Location, Sheet 1
of 2

Mitigation Segment
SMCRA S-3004-99
Tom L. Scholl, Rush Creek Mine
200100384-1
500 Scale



MATCH B

MATCH A

EXHIBIT B
SHEET 2 OF 2
1" = 500'

Drawing 4 of 5
Stream Assessment Location,
Sheet 2 of 2
Temporary Impact Restoration
SMCRA S-3004-99
Tom L. Scholl, Rush Creek Mine
200100384-1
500 Scale

